

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 CENTRAL DISTRICT OF CALIFORNIA  
8 WESTERN DIVISION  
9

10 JESUS LOPEZ, ) No. SACV 11-1207 SVW (FFM)  
11 )  
12 Petitioner, ) ORDER DENYING APPLICATION  
13 v. ) FOR ENLARGEMENT OF TIME  
14 G. D. LEWIS, Warden, ) FOR LACK OF JURISDICTION  
15 Respondent. )  
\_\_\_\_\_ )

16 Jesus Lopez (“Petitioner”), a California state prisoner proceeding *pro se*,  
17 apparently wishes to challenge his state court conviction by seeking federal  
18 habeas relief. Rather than filing a petition for writ of habeas corpus, Petitioner  
19 filed a document in which he states that he wishes to receive a 90 day extension of  
20 time to seek federal habeas relief (“Application”). By the Application, Petitioner  
21 apparently seeks an extension of the one-year limitations period, under 28 U.S.C.  
22 § 2244(d)(1), for filing a federal habeas petition. After reviewing the Application,  
23 the Court has determined that the relief requested cannot be granted.

24 Under the “case or controversy” requirement of Article III, Section 2 of the  
25 United States Constitution, federal courts may not issue advisory opinions. *See*  
26 *Princeton University v. Schmid*, 455 U.S. 100, 102, 102 S. Ct. 867, 869 (1982).  
27 As Petitioner has not actually filed a federal habeas petition challenging his  
28 conviction and/or sentence, there is no case or controversy before the Court, and

1 he essentially seeks an advisory opinion. *See Calderon v. Ashmus*, 523 U.S. 740,  
2 746, 118 S. Ct. 1694, 140 L. Ed. 2d 970 (1998) (actual “controversy” in 28 U.S.C.  
3 § 2254 action is whether petitioner is entitled to have the conviction or sentence  
4 imposed by the state court set aside).

5 By the Application, Petitioner asks the Court to decide prospectively  
6 whether his habeas petition will be time-barred when filed at some unspecified  
7 future date, without any adverse parties before it and without any information on  
8 which to base any conclusion that such a filing properly will fall within the one-  
9 year limitations period, even as extended. The Court cannot grant Petitioner the  
10 prospective relief he seeks without offending the case or controversy requirement  
11 of the Constitution.

12 The Court notes further that, even if it had jurisdiction to consider the relief  
13 requested, Petitioner has not shown any entitlement to such relief. Although not  
14 expressly stated in the Application, it may be that Petitioner seeks an order that he  
15 will be entitled to equitable tolling of his limitations period should he seek federal  
16 habeas relief in the future through a petition which is untimely under Section  
17 2244(d)(1). The one-year statute of limitations set forth in Section 2244(d)(1)  
18 may be subject to equitable tolling “if ‘extraordinary circumstances’ beyond a  
19 prisoner’s control make it impossible to file a petition on time.” *Calderon v.*  
20 *United States District Court (Beeler)*, 128 F.3d 1283, 1288 (9th Cir. 1997),  
21 *overruled in part on other grounds, Calderon v. United States District*

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 *Court (Kelly V)*, 163 F.3d 530, 540 (9th Cir. 1998).<sup>1</sup> However, the Ninth Circuit  
2 noted in *Beeler* that “equitable tolling will not be available in most cases.” *Id.*  
3 Petitioner has not yet established any “extraordinary circumstances” beyond his  
4 control which have prevented him from timely filing a habeas petition, and it  
5 would be inappropriate for this Court to render any ruling on the equitable tolling  
6 question based on the inadequate record before it.

7 Should Petitioner hereafter file a habeas petition and should the respondent  
8 raise the one-year limitations period as a bar to relief, Petitioner may then make an  
9 equitable tolling argument. At that point, the Court may consider whether the  
10 Section 2244(d)(1) limitations period can be tolled.

11 Based upon the foregoing, **IT IS ORDERED** that the Application is  
12 **DENIED** and that Judgment be entered dismissing this action without prejudice  
13 for lack of jurisdiction.

---

14  
15  
16  
17  
18  
19  
20 <sup>1</sup> *Beeler* involved a request for extension of time to file a habeas petition made  
21 in advance of the filing of the petition, but is inapposite. *Beeler* was a death  
22 penalty habeas case, in which the petitioner’s filed request for appointment of  
23 counsel (and stay of execution) must be deemed to constitute the commencement  
24 of the habeas action. *See McFarland v. Scott*, 512 U.S. 849, 114 S.Ct. 2568, 129  
25 L. Ed. 2d 666 (1994). Here, Sajor-Reeder’s Application -- which is bereft of any  
26 information pertaining to her conviction or possible federal habeas claims -- cannot  
27 be deemed to constitute a petition for writ of habeas corpus which would  
28 commence a habeas action. *See* Rule 2(a) and (c) of the Rules Governing Section  
2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254 (application  
for writ of habeas corpus shall be in the form of a petition which specifies each  
ground for relief which is available to the petitioner and the factual basis for each  
ground for relief).

1           **IT IS FURTHER ORDERED** that the Clerk serve copies of this Order and  
2 the Judgment herein on Petitioner.

3           **LET JUDGMENT BE ENTERED ACCORDINGLY.**

4  
5 DATED: October 4, 2011

6  
7   
STEPHEN V. WILSON  
United States District Judge

8 Presented by:

9  
10 /S/ FREDERICK F. MUMM  
11 FREDERICK F. MUMM  
12 United States Magistrate Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28